NO. 83-859

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

CHARLES R. CARNEY,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Fourth and Fourteenth Amendments to the United States Constitution permit law enforcement officers to conduct a search of a fully mobile "motor home" without a search warrant, pursuant to the vehicle exception to the warrant requirement created by this Court in Carroll v. United States (1925) 267 U.S. 132, 149, when the officers have probable cause to believe the motor home contains that which is lawfully subject to seizure.

2. Whether the underlying basis for the vehicle exception is inherent mobility, as this Court announced in Carroll, or whether the California Supreme Court correctly interpreted the United States Constitution when it repudiated the Carroll reasoning and announced the underlying

basis for the vehicle exception was reduced expectation of privacy.

3. If a motor home is entitled to different treatment from other vehicles, how does one distinguish between a motor home and any other vehicle for purposes of the vehicle exception.

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PEOPLE OF THE STATE OF CALIFORNIA,

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v.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, State of California, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the Supreme Court of the State of California reversing the order of probation, entered on September 8, 1983. A petition for rehearing was denied October 6, 1983. The remittitur was issued on October 11, 1983.

OPINIONS BELOW

The opinion of the California Supreme Court reversing the order of probation (People v. Carney (1983) 34 Cal.3d 597) appears as Appendix A of this petition. A copy of the California Supreme Court's order denying the petition for rehearing without opinion appears as Appendix B.

JURISDICTION

The judgment of the California Supreme Court was filed on September 8, 1983. A timely petition for rehearing was denied on October 6, 1983. This petition is filed within 60 days of that date and is therefore timely. This Court's jurisdiction is invoked under 28 U.S.C. section 1257(3).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendments Five and Fourteen.

STATEMENT OF THE CASE

In an information filed by the District Attorney of San Diego County of September 14, 1979, respondent, Charles Richard Carney, was charged with a single count of possession of marijuana for sale. (CT 1.)[1/]

Respondent's motion to suppress evidence taken from the search of his motor home was submitted on the transcript of the preliminary hearing and

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1. The designation "CT" refers to the Clerk's Transcript on appeal. The designation "RT" refers to the Reporter's Transcript on appeal.

subsequently denied on October 19, 1979. (CT 41.)

On November 5, 1979, respondent withdrew his not guilty plea and entered a plea of nolo contendere to the charge. On January 8, 1980, respondent was granted probation for a period of three years. (CT 34-36, 44.)

Respondent's conviction was affirmed by the California Court of Appeal on March 18, 1981. On September 8, 1983, the California Supreme Court reversed respondent's grant of probation.

STATEMENT OF FACTS[2/]

While engaged in an ongoing investigation into narcotics activities

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2. The facts are taken from the Reporter's Transcript of the preliminary examination held on September 5, 1979. This testimony served as the sole evidentiary basis for the trial court's decision to deny respondent's motion to suppress evidence.

in downtown San Diego on May 31, 1979, Drug Enforcement Administration (DEA) Agent Robert Williams observed respondent, Charles Carney, approach a young Mexican boy. Williams continued to observe the transaction because respondent did not seem to belong in the area. Agent Williams watched as respondent and the boy got into a Dodge Mini Motor Home which was parked in a public parking lot at 4th and G Streets. (RT 4-8, 10.)

Agent Williams noted the license number of the motor home and recalled he had, on numerous occasions, received informaton that this particular vehicle was involved in drug activity. The information was received by letter and telephone contacts from an organization known as "WETIP" (We Turn In Pushers). Agent Williams knew the motor home belonged to Lee Bowman. Williams

also knew an unidentified man had taken Bowman's place in dealing narcotics, and exchanging marijuana for sex with young boys, from the motor home. Williams estimated the age of the boy respondent escorted into the motor home to be 15 or 16. (RT 8-10, 14-15, 51, 55.)

The boy emerged from the motor home approximately an hour and a quarter after entry. Williams, along with Agents Clem and Peralta, followed the boy, made contact with him and informed the boy they were agents conducting a narcotics investigation. In response to Williams' questions, the boy stated the "older man" asked him to have sex with him. He allowed the older man to orally copulate him in exchange for a small bag of marijuana. (RT 15-22.)

Williams took the boy back to the motor home and had the boy knock on

the door. When respondent opened the door and stepped out of the motor home, Williams, Clem and Peralta identified themselves as agents. Agent Clem stepped up one step and looked inside the motor home to see if there were any other occupants in the vehicle. Clem observed, in plain view on a table inside the motor home, a large bag of marijuana, a small bag of marijuana, some Ziploc baggies and a scale. When Clem informed Williams of his observations, Williams placed respondent under arrest. Photographs of the interior of the motor home were taken by Agent Williams. The vehicle was then driven to the National City office of the Narcotics Task Force for an inventory. During the inventory search marijuana was found inside the cupboard above the

table and inside the refrigerator. (RT 23-27, 29, 34-35, 40-49, 72-73.)

HOW THE FEDERAL QUESTION IS PRESENTED

In the trial court, counsel for respondent filed a motion to suppress the evidence seized from his motor home on the ground the seizure violated both the federal and state constitutions. (CT 2-16.) The trial court denied respondent's motion on several bases, one of which was that the search of the motor home and seizure of evidence therefrom was authorized by the vehicle exception to the Fourth Amendment's warrant requirement. Respondent's argument to the California Court of Appeal, that the "automobile exception" did not apply to a motor home, was rejected by the Court of Appeal. Respondent presented the same argument

to the California Supreme Court. In its opinion, the California Supreme Court held a motor home is fully protected by the United States Constitution's Fourth Amendment guarantee against unreasonable search and seizure and is not subject to the "automobile exception" to the warrant requirement. (34 Cal.3d 597, 610; appen. A, p. 30.) Underlying the California Supreme Court's decision is the premise that inherent mobility has been supplanted by reduced expectation of privacy as the primary reason for the "automobile exception." (34 Cal.3d at pp. 604-605; appen. A, pp. 11-17.) Petitioner's timely petition for rehearing unsuccessfully urged the California Supreme Court's decision was erroneously based on a mistaken premise, and that the court failed to define the scope of its rule.

REASONS FOR GRANTING THE WRIT

The California Supreme Court has erroneously disregarded the holdings of this Court concerning the basis underlying the vehicle exception to the Fourth Amendment's warrant requirement. The California Supreme Court held inherent mobility of a vehicle no longer provides the basis for the vehicle exception. Instead, the California Supreme Court erroneously referred to the exception as an "automobile exception" and concluded it is premised on a reduced expectation of privacy an individual has in his automobile. Based upon this false premise, the California Supreme Court held the search of respondent's motor home could not be based on the "automobile exception" because an individual has a greater expectation of privacy in a motor home than in an automobile.

The premise underlying the California Supreme Court's decision conflicts with close to 60 years of precedent from this Court. According to the opinions of this Court, inherent mobility of a vehicle creates sufficient exigency to render a warrant unnecessary to search a vehicle, provided there is probable cause to search. Thus, this Court should grant the writ to insure the Federal Constitution is properly interpreted in accordance with this Court's decisions.

This case is critically important because there are millions of vehicles travelling the highways of this nation which could be called "motor homes." Most of these vehicles have added room and facilities inside which make them particularly useful as mobile criminal operational centers.

Increasingly law enforcement is finding the larger models being used as illegal drug laboratories. Though many of the vehicles which could be characterized as motor homes are large, they are no less mobile than a subcompact automobile. In fact, because they may be fully self-contained, such vehicles are far more mobile than the traditional automobile.

Though the California Supreme Court creates a constitutionally significant class of vehicles, those vehicles which make up the class remain a mystery because the California Supreme Court never defines the class. Law enforcement officers have been saddled with the impossible burden of discerning the constitutional significance of the hunreds of shapes, makes and present uses of motor vehicles. This burden stands in stark contrast to need for

clear standards or "brightlines" which has been recognized by this Court. (New York v. Belton (1981) 453 U.S. 454, 458.) Thus, instead of interpreting the United States Constitution in such a fashion as to provide guidance to those sworn to enforce its provisions, the California Supreme Court has created a rule which defies definition. This unacceptable state of affairs can be settled only through intervention from this Court.

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ARGUMENT

I

THE CALIFORNIA SUPREME COURT ERRONEOUSLY DISREGARDED PRECEDENT OF THIS COURT IN HOLDING THAT MOBILITY OF A VEHICLE HAS BEEN SUPPLANTED BY REDUCED EXPECTATION OF PRIVACY AS THE LASIS FOR THE VEHICLE EXCEPTION TO THE FOURTH AMENDMENT'S WARRANT REQUIREMENT

In its majority opinion, the California Supreme Court engages in a discussion of the genesis of what it calls the "automobile exception" to the warrant requirement of the Fourth Amendment. (People v. Carney (1983) 34 Cal.3d 597, 604-605; appen. A, pp. 9-17.) Though it recognized the original reason for the exception was the inherent mobility of vehicles, the California Supreme Court incorrectly concluded mobility is no longer the prime justification for the automobile exception under the

federal constitution, focusing instead on the diminished expectation of privacy which surrounds the automobile. (People v. Carney, supra, 34 Cal.3d pp. 604-605; appen. A, pp. 10-17.) The California Supreme Court's conclusion is contrary to this Court's decisions and accepted policy.

The overwhelming bulk of authority supports the position the primary reason for the vehicle exception under the federal constitution is the inherent mobility of the vehicle. Mobility was the justification used by this Court 59 years ago when it announced the vehicle exception. (Carroll v. United States (1925) 267 U.S. 132, 153.) As recently as 1982 this Court confirmed mobility as the basis for the exception. (United States v. Ross (1982) 456 U.S. 798, 804-809.)

Between 1925 and 1982 this Court repeatedly reconfirmed this premise. (See, Colorado v. Bannister (1980) 449 U.S. 1, 3; Chambers v. Maroney (1970) 399 U.S. 42, 48-49; Dyke v. Taylor Implement Co. (1968) 391 U.S. 216, 221; Brinegar v. United States (1949) 338 U.S. 160, 164.) The United States Circuit Courts of Appeals have applied the Carroll analysis. (See, United States v. Cadena (5th Cir. 1979) 588 F.2d 100, 102; United States v. Lovenguth (9th Cir. 1975) 514 F.2d 96, 99; United States v. Cusanelli (6th Cir. 1973) 472 F.2d 1204, 1206; United States v. Miller (10th Cir. 1972) 460 F.2d 582, 585.) The Supreme Court of Arizona twice addressed the vehicle exception in the context of a motor home case and based its decisions on the inherent mobility

of the vehicle. (State v. Million (Ariz. 1978) 583 P.2d 897, 902; State v. Sardo (Ariz. 1975) 543 P.2d 1138, 1142.) As recently as February of 1983, the California Supreme Court recognized mobility as the primary basis for the vehicle exception. (People v. Chavers (1983) 33 Cal.3d 462, 468-469; see also, People v. Laursen (1972) 8 Cal.3d 192, 201; People v. McKinnon (1972) 7 Cal.3d 899, 907.)

For whatever reason, the California Supreme Court chose to redefine the exception ignoring this Court's precedent. In its discussion of United States v. Ross (People v. Carney, supra, 34 Cal.3d at pp. 605-606, fn. 3; appen. A, pp. 14-16) the California court ignored the Ross court's discussion of mobility as the primary basis for the

vehicle exception. (United States v. Ross, supra, 456 U.S. at pp. 804-809.) Such action demonstrates a steadfast refusal to follow this Court's interpretation of the United States Constitution.

This case demonstrates the critical importance of the reason underlying the exception. Obviously, if mobility is the primary reason for the vehicle exception an operable motor home, like the one in this case, would be subject to the exception. A contrary result was reached in this case because it was analyzed by the court purely on a privacy theory, completely ignoring mobility. Thus, it is evident the basis for the vehicle exception is a critical factor in the analysis of vehicle search cases. Defining the basis for the exception is the exclusive province of

this Court, and this Court has defined the exception as one based on mobility. The California Supreme Court's disagreement on this point cannot survive.

One reason for the California Supreme Court's mistaken interpretation of the basis for the exception is demonstrated by its characterization of the exception as an "automobile exception" instead of a vehicle exception. Though commonly referred to as the automobile exception, Chief Justice Taft announced a vehicle exception in Carroll v. United States.

> "On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid. The Fourth Amendment is to be

> construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens." (Carroll v. United States, supra, 267 U.S. at p. 149, emphasis added.)

The rationale for the rule underscores its application to all vehicles.

> "We have made a somewhat extended reference to these statutes to show that the guarantee of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the Government, as recognizing a necessary difference between a search of a store, dwelling house or other structure in respect of which a proper official warrant readily may be obtained, and a search of a ship, motor boat, wagon or automobile, for contraband goods, where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality of jurisdiction in which the warrant must be

sought." (Carroll v. United States, supra, at p. 153, emphasis added.)

The application of the Carroll rule to vehicles and vessels other than automobiles further demonstrates mobility is the true basis for the exception. (See, United States v. Montgomery (10th Cir. 1980) 620 F.2d 753, 760, (warrantless search of an airplane and camper); United States v. Cadena, supra, 588 F.2d at p. 102, (search of a ship); United States v. Lovenguth, supra, 514 F.2d at p. 99 (search of a camper); United States v. Miller, supra, 460 F.2d at p. 585, (search of a fully self-contained Econoline van); and United States v. Rodgers (5th Cir. 1971) 442 F.2d 902, 904, (search of camper).) Without question, the exception is based upon the inherent mobility of the vehicle and the exception applies to every operable

vehicle in use, be it an automobile, a motor boat, or a Conestoga Wagon, the 19th century equivalent of a motor home.

Petitioner does not suggest expectation of privacy does not have a place in the analysis of a vehicle search. Indeed, the lack of a reasonable expectation of privacy serves as an independent justification for a warrantless search. (Arkansas v. Sanders (1979) 442 U.S. 753, 761.) Once a vehicle has been rendered immobile, expectation of privacy becomes a factor for consideration in evaluating the propriety of a warrantless search. (See, South Dakota v. Opperman (1976) 428 U.S. 364, 368; Cady v. Dombrowski (1973) 413 U.S. 433, 441-442.) However the vehicle in this case was clearly not rendered immobile. Furthermore, petitioner is aware of no authority prior to

the California Supreme Court's decision in this case, which has held expectation of privacy totally supplants mobility as the touchstone for analysis of a warrantless search of an occupied vehicle in a public place. It is critical for this Court to grant petitioner's writ of certiorari to insure the vehicle exception to the Fourth Amendment's warrant requirement is properly and consistently applied in all the courts of this land.

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II

PETITIONER'S WRIT OF CERTIORARI SHOULD BE GRANTED TO RESOLVE A CONFLICT IN THE FEDERAL CIRCUIT COURTS OF APPEALS AS TO THE BASIS FOR THE VEHICLE EXCEPTION

The California Supreme Court is not the only appellate court in the country to hold expectation of privacy has supplanted mobility as the basis for the vehicle exception. The Ninth Circuit Court of Appeals held a motor home is not subject to the vehicle exception because of the heightened expectation of privacy associated with the vehicle. (United States v. Williams (9th Cir. 1980) 630 F.2d 1322, 1326; accord, United States v. Wiga (9th Cir. 1981) 662 F.2d 1325, 1329.) Williams and Wiga provide a stark contrast to cases from the other federal circuits and prior Ninth Circuit cases which apply the mobility analysis

of Carroll v. United States, supra, 267 U.S. at page 153, to searches of vehicles and vessels capable of serving as one's home. (In the Tenth Circuit, United States v. Montgomery, supra, 620 F.2d at p. 760; United States v. Miller, supra, 460 F.2d at p. 585; in the Ninth Circuit, United States v. Lovenguth, supra, 514 F.2d at p. 99; United States v. Gonzalez-Rodriquez (9th Cir. 1975) 513 F.2d 928, 931; in the Sixth Circuit, United States v. Cusanelli, supra, 472 F.2d at p. 1206; and in the Fifth Circuit, United States v. Cadena, supra, 588 F.2d at pp. 101-102; United States v. Clark (5th Cir. 1977) 559 F.2d 420, 423-424; United States v. Rodgers (5th Cir. 1971) 442 F.2d 902, 903.) This schism in the circuits serves as an independent and compelling justification for the granting of petitioner's writ.

III

THE CALIFORNIA SUPREME COURT'S FAILURE TO DEFINE "MOTOR HOME" IS CONTRARY TO THE NEED TO PROVIDE LAW ENFORCEMENT WITH WORKABLE GUIDELINES BY WHICH TO REGULATE THEIR CONDUCT

The Fourth Amendment of the United States Constitution as applied to the states by the Fourteenth Amendment protects individuals from unreasonable searches and seizures. A police officer, who is not trained to make fine legal distinctions must nonetheless insure his conduct in searching a vehicle is reasonable. Guidance for the officers is essential. An indisputable need for clear standards or "brightlines" to guide the conduct of police in vehicle searches has been articulated by this Court and by the California Supreme

Court. (New York v. Belton (1981) 453 U.S. 454, 458; United States v. Ross, supra, 456 U.S. at pp. 803-804; People v. Chavers, supra, 33 Cal.3d at p. 469.)

Flying in the face of this pressing need for stability in search cases is the California Supreme Court's steadfast refusal to define the term "motor home." (People v. Carney, supra, 34 Cal.3d at p. 614 (dissenting opinion); appen. A, pp. 46-47.) The California Supreme Court has thus created a constitutionally significant class of vehicles, without providing a useable definition of the class.

The term "motor home" defies objective definition. The California Supreme Court simply concluded a motor home is a "hybrid" between a motor vehicle and a home. (People v. Carney, supra, at p. 606; appen. A, p. 17.)

Such a characterzation is of no help to law enforcement officers who must now distinguish between motor homes and motor vehicles. The particular hybrid referred to by the court has the characteristics of a chameleon and covers the entire range of vehicle configurations. A subcompact car where the driver keeps a sleeping bag may be "home" just as the Winnebago with interior plumbing, refrigeration and sleeping for six may simply provide transportation. Present use and subjective intent of the user of the vehicle is the critical factor to the characterization of a vehicle as a motor home. Unlike mobility, such factors are not subject to objective confirmation.

On a daily basis law enforcement will come in contact with every imaginable vehicle in innumerable situations. They will be expected to

make reasonable decisions regarding search and seizure based upon objective factors. Yet, in vehicle search cases the California Supreme Court has taken away the brightline of mobility as the basis for the search and replaced this brightline with the fuzzy concepts of present use and intent. By erasing the brightline, this case does little but announce a new search and seizure issue which will require law enforcement to work "at risk" and will both encourage and require years of litigation to fashion a workable rule. This rule was announced under the guise of the Fourth Amendment of the United States Constitution. In light of the acknowledged need for brightlines, it is vitally important to the citizens of all states and to law enforcement officials for this Court to ensure a workable, readily

definable rule to apply to all vehicle searches.

CONCLUSION

For the foregoing reasons petitioner respectfully submits that the writ of certiorari should issue to review the decision of the Supreme Court of the State of California.

Respectfully submitted,

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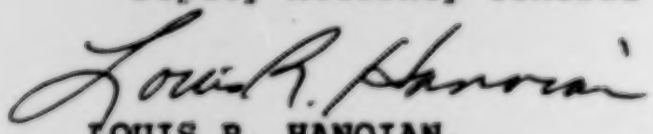
Attorney General of the
State of California

MICHAEL D. WELLINGTON,
Deputy Attorney General



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APPENDIX A

APPENDIX A

[Filed September 8, 1983]

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

No. CRIM 22047

Superior Court No. CR 47927

OPINION

THE PEOPLE,	)
Plaintiff and Respondent,	)
v.	)
CHARLES R. CARNEY,	)
Defendant and Appellant.	)

Defendant was charged with possession of marijuana for sale. (Health & Saf. Code, § 11359.) After unsuccessful motions to suppress evidence seized from his motor home, defendant pleaded nolo contendere and was

SEE DISSENTING OPINION

granted probation. He appeals from that order.

The major issue presented is whether the warrantless search of defendant's motor home was justified by an exception to the warrant requirement. The People seek to justify the search on two alternate theories: (1) the automobile exception and (2) the protective sweep exception.[1] We conclude that neither of these proposed justifications is applicable under the facts of this case and hence the order must be reversed.

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1. The People have apparently abandoned their contention, raised below, that the motor home was validly searched as an "instrumentality of the crime." In any event, our decision in People v. Minjares (1979) 24 Cal.3d 410, 421-422, explicitly rejected this argument.

I

Agent Robert Williams of the Drug Enforcement Administration undertook a surveillance of suspected drug dealer Lee Bowman in the Horton Plaza area of downtown San Diego. Williams noticed defendant because "he did not look like he fit in the area there, and he was approaching a Mexican boy and talking to him." Defendant and the youth walked to a nearby parking lot, entered a Dodge motor home parked there and closed the curtains, including one across the front window.

Williams noted the license plate number of the motor home and recalled having received uncorroborated information from which he inferred that defendant "had taken the place of the person [i.e., Bowman] we were following and [that he was] dealing narcotics."

The information was furnished by an organization called "WeTip" (We Turn in Pushers); it suggested that the motor home was associated with an individual who reportedly was exchanging marijuana for sex.

Additional officers, including an agent by the name of Clem, arrived in response to a request by Williams. The motor home was kept under surveillance during the entire hour and a half that defendant and the youth were inside. After the youth left the motor home the officers followed, stopped and questioned him. He told them the occupant of the motor home had given him marijuana in exchange for allowing the man to perform oral copulation on him.

The youth then complied with the officers' request that he return to the motor home, knock on the door, and

ask defendant to come out. Defendant answered the door and as he stepped out of the motor home, the agents identified themselves as law enforcement officers. Agent Clem entered the motor home; inside he observed marijuana, ziploc bags, and a scale on a table. On the basis of Clem's observations, Williams arrested defendant, seized the motor home, and drove it to the police station. A subsequent search of the motor home revealed additional marijuana in the cupboards and refrigerator.

At the preliminary hearing defendant moved to suppress the evidence seized from both searches of the motor home. The motion was denied by the magistrate on the ground that as to the initial search, Agent Clem had the right to enter to look for other persons; the more thorough second search was upheld

as a standard inventory search. Defendant unsuccessfully renewed his suppression motion in the superior court, which found that (1) there was sufficient probable cause to arrest defendant; (2) the search of the motor home was authorized under the automobile exception; and (3) the motor home itself could be seized as an instrumentality of the crime.

II

Article I, section 13, of the California Constitution establishes the right of the people of this state to be secure in their persons, houses, papers and effects against unreasonable searches and seizures. The Fourth Amendment provides a similar guarantee. This protection has repeatedly been interpreted to require the impartial approval of a judicial officer before undertaking most searches. (Payton v. New York (1980)

445 U.S. 573, 583-585; People v. Dalton (1979) 24 Cal.3d 850, 855.) "In the ordinary case . . . a search of private property must be both reasonable and pursuant to a properly issued search warrant." (Arkansas v. Sanders (1979) 442 U.S. 753, 758.)

The importance of the judicial warrant cannot be overemphasized: "'The warrant requirement has been a valued part of our constitutional law for decades, and it has determined the result in scores and scores of cases in courts all over this country. It is not an inconvenience to be somehow "weighed" against the claims of police efficiency. It is, or should be, an important working part of our machinery of government, operating as a matter of course to check the "well-intentioned but mistakenly overzealous executive officers" who are

a part of any system of law enforcement' . . . . By requiring that conclusions concerning probable cause and the scope of a search 'be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime' [citation], we minimize the risk of unreasonable assertions of executive authority." (Id. at pp. 758-759.) Thus, searches conducted without the benefit of the judicial warrant process are "'per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions.'" (Mincey v. Arizona (1978) 437 U.S. 385, 390, quoting Katz v. United States (1967) 3S9 U.S. 347, 357; accord, People v. Minjares, supra, 24 Cal.3d at p. 416.)

It is against this background that we examine defendant's challenge to the warrantless search of the living compartment of his motor home. If that search is to be upheld, it is the state's burden to show that it falls within one of the "few carefully circumscribed and jealously guarded exceptions" (People v. Dalton, supra, 24 Cal.3d at p. 855) to the warrant requirement. (People v. Dumas (1973) 9 Cal.3d 871, 881; Arkansas v. Sanders, supra, 442 U.S. at p. 760; McDonald v. United States (1948) 335 U.S. 451, 456.)

In the present case the state seeks to justify the search primarily under the so-called "automobile exception." Our formulation of the controlling principles of that doctrine provides that "officers are empowered . . . to search an automobile as 'long

as it can be demonstrated that (1) exigent circumstances rendered the obtaining of a warrant an impossible or impractical alternative, and (2) probable cause existed for the search.'" (Wimberly v. Superior Court (1976) 16 Cal.3d 557, 563.)

The "automobile exception" had its genesis in Carroll v. United States (1925) U.S. 132; it has since been expanded and extensively litigated to the point that this area of search and seizure law is now characterized as "troubled" (United States v. Ross (1982) 798, ___ [72 L.Ed.2d 572, 589]) and "something less than a seamless web" (Cady v. Dombrowski (1973) 413 U.S. 433, 440). The court in Carroll premised its analysis on the notion that there is a constitutional difference between houses and cars. The underlying

rationale for this distinction was the inherent mobility of automobiles. (Carroll, supra, 267 U.S. at p. 153; Cooper v. California (1967) 386 U.S. 58, 59; see also Katz, Automobile Searches and Diminished Expectations in the Warrant Clause (1982) 19 Am.Crim.L.Rev. 557, 563-565 (hereafter referred to as Katz).) California courts have independently relied on similar reasoning. (People v. Laursen (1972) 8 Cal.3d 192, 201; People v. McKinnon (1972) 7 Cal.3d 899, 907; People v. Odom (1980) 108 Cal.App.3d 100, 107.)

Although subsequent decisions have purported to rely on the mobility justification, the courts have recognized that this reasoning alone fails to support their sustaining of "warrantless searches of vehicles . . . in cases in which the possibilities of the

vehicle's being removed or evidence in it destroyed were remote, if not non-existent." (Cady v. Dombrowski, supra, 413 U.S. at pp. 441-442; accord, United States v. Chadwick (1977) 433 U.S. 1, 12; South Dakota v. Opperman (1976) 428 U.S. 364, 367.) This is demonstrated first by the line of cases in which warrantless searches were upheld regardless of the automobile's actual mobility, e.g., where there was no immediate danger that the vehicle would be removed from the jurisdiction. (See, e.g., Cady, supra, 413 U.S. 433 [car, disabled as result of accident, in control of police; driver, sole occupant, arrested and hospitalized]; Chambers v. Maroney (1970) 399 U.S. 42 [occupants of car arrested and car taken to police station]; Cooper v. California (1967) 386 U.S. 58 [defendant arrested and car

impounded].) Conversely, another line of decisions disapproves certain warrantless searches of containers despite the recognition of their "mobility." (Sanders, supra, 442 U.S. 753 [suitcase in trunk of car]; Chadwick, supra, 433 U.S. 1 [footlocker in trunk of car]; People v. Minjares, supra, 24 Cal.3d at p. 418 [real, rather than theoretical, exigencies are required before luggage may be searched without a warrant]; see also United States v. Ross, supra, 456 U.S. at p. ____ [72 L.Ed.2d at pp. 584-586, 592-593] [containers in cars in which there is probable cause to believe contraband is being transported determined to be less protected than containers in other settings]; but see

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Coolidge v. New Hampshire (1971) 403 U.S. 443, 461, fn. 18.)[2]

In the face of this apparent volatility, the courts have recognized that mobility is no longer the prime justification for the automobile exception; rather, "the answer lies in the diminished expectation of privacy which surrounds the automobile." (Chadwick, supra, 433 U.S. 1, 12; People v. Minjares, supra, 24 Cal.3d at p. 418; see also Katz, op. cit. supra, 19 Am.Crim.L.Rev. at pp. 564-572; State v. Bottelson (Idaho 1981) 625 P.2d 1093, 1096.)[3] A variety of factors that

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2. For a thoughtful discussion of the development of the "automobile exception," see Note, Warrantless Vehicle Searches and the Fourth Amendment: The Burger Court Attacks the Exclusionary Rule (1982) 68 Cornell L.Rev. 105.

3. This reasoning is not undermined by United States v. Ross, supra,

that reduce the expectation of privacy

in automobiles have been identified

Footnote 3 continued:

the most recent Supreme Court decision to address the "automobile exception." In Ross, the court was called upon to resolve the conflict, which is involved in every case in which an automobile is stopped on a highway or public street, "between the individual's constitutionally protected interest in privacy and the public interest in effective law enforcement." (456 U.S. at p. ____ [72 L.Ed.2d at p. 580].) The court suggested that an "individual's expectation of privacy in a vehicle and its contents may not survive if probable cause is given to believe that the vehicle is transporting contraband." (Id. at pp. 592-593.) Thus, it held that "if probable cause justifies the search of a lawfully stopped vehicle, it justifies the search of every part of the vehicle and its contents that may conceal the object of the search." (Id. at p. 594.) This holding signals a retreat from the earlier "container" cases without overruling them entirely. As one commentator has paraphrased it, under the new rule "when police officers have probable cause to stop an automobile on the street and the object of their search is not some specifically identifiable container known to be inside, they may search the entire car and open any package or container the officers find inside whether they have a search

by the courts. "One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects . . . . It travels public thoroughfares where both its occupants and its contents are in plain view." (Italics

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Footnote 3 continued:

warrant or not." (Note, United States v. Ross: Search and Seizure Made Simple (1983) 10 Pepperdine L.Rev. 421, 446.)

This expansion of the scope of automobile searches has no relevance to the issue raised by the case at hand if we determine that the justifications for the "automobile exception" are inapplicable to motor homes. The only aspect of Ross that relates to the present case, therefore, is the extent to which the court expresses a continued concern for expectations of privacy in the search and seizure area. As discussed above, although Ross holds there is a lowered expectation of privacy in automobiles and containers placed in automobiles, this does not signal a retreat from the general principles of expectations of privacy in other settings such as those presented by the case at bar.

added.) (Cardwell v. Lewis (1974) 417 U.S. 583, 590.) In other words, "the expectation of privacy as to automobiles is . . . diminished by the obviously public nature of automobile travel." (South Dakota v. Opperman, supra, 428 U.S. at p. 368; see also Rakas v. Illinois (1978) 439 U.S. 128, 154, fn. 2 (conc. opn. by Powell, J.).) Moreover, "automobiles, unlike homes, are subject to pervasive and continuing governmental regulation and controls" which adds to the lessened expectation of privacy. (Id.; accord, United States v. Chadwick, supra, 433 U.S. 1, 12-13.)

In the present case, we are called upon to apply this reasoning to a hybrid -- a motor home -- which has the mobility attribute of an automobile combined with most of the privacy characteristics of a house. Defendant

maintains that the factors discussed above that dilute the expectation of privacy in automobiles do not so affect the privacy interests in a motor home. We agree.

First and foremost, unlike an automobile the primary function of a motor home is not transportation. Motor homes are generally designed and used as residences; their essential purpose is to provide the occupant with living quarters, whether on a temporary or a permanent basis. Both Vehicle Code section 396 and Health and Safety Code section 18008 refer to a mobilehome not as a vehicle but as a transportable "structure." The motor home at issue here was equipped with at least a bed,

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a refrigerator, a table, chairs, curtains and storage cabinets.[4/] Thus the contents of the motor home created a setting that could accommodate most private activities normally conducted in a fixed home. The configuration of the furnishings, together with the use of the motor home for all manner of strictly personal purposes, strongly suggests that the structure at issue is more properly treated as a residence than a mere automobile.

Homes are afforded the maximum protection from warrantless searches and

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4. The record does not disclose what other fixtures, furnishings or appliances (i.e., stove, sink, etc.) were installed in this particular motor home. Amicus implies that it also had bathing and toilet facilities, but the record is silent on the point. Although a more complete record would have been helpful, its omission does not bar us from concluding that defendant's motor home is more akin to living quarters than to a mere mode of transportation.

seizures. (People v. Ramey (1976) 16 Cal.3d 263, 271, 273-276; People v. Dumas, supra, 9 Cal.3d at p. 882, fn. 8.) The "'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'" (Payton v. New York, supra, 445 U.S. at p. 585.) The fact that a motor home is not affixed to real property does not demean its protected status as a house.

"The concept that a man's home is his castle is an ancient one. It has had a profound effect upon our legal history. Its application to the innocent and the guilty, the rich and the poor it no figment of the imagination of modern-day judges." (United States v. Nelson (6th Cir. 1972) 459 F.2d 884, 885.) The classic exhortation of William Pitt, Earl of Chatham, bears

repetition: "'The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storms may enter, the rain may enter; but the King of England cannot enter -- all his force dares not cross the threshold of the ruined tenement!'" (Quoted in Miller v. United States (1958) 357 U.S. 301, 307.) The principal function of the structure here was to provide living quarters rather than a means of transportation; furthermore, this function was reasonably apparent from the exterior of the motor home. For these reasons, it is entitled to a degree of protection similar to that accorded an Englishman's cottage or "ruined tenement."[5/]

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5. In People v. Dumas, supra, 9 Cal.3d at page 882, footnote 9, we cited

We recognize that motor homes are commonly used as temporary living quarters for vacations or other short-term visits away from one's primary residence. This factor, however, does not diminish the reasonable expectation of privacy. "No less than a tenant of a house, or the occupant of a room in a

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Footnote 5 continued:

United States v. Miller (10th Cir. 1972) 460 F.2d 582, as holding that a "mobile camper van" is to be accorded protection similar to that given an automobile. This reference, however, was merely part of a review of the law of other jurisdictions in various related fact situations; we did not intend thereby to express any approval of the holding in Miller. In any event, the Miller court did not undertake an expectation of privacy analysis, but instead upheld the search under the "totality of the facts and circumstances." (Id. at p. 586.) Furthermore, Miller was decided prior to Chadwick, supra, which significantly altered the federal constitutional analysis to be applied to automobile search cases. For these reasons, Miller is not persuasive authority on the question presented here.

boarding house, [citation] a guest in a hotel room is entitled to constitutional protection against unreasonable searches and seizures." (Stoner v. California (1964) 376 U.S. 483, 490; accord, People v. Escudero (1979) 23 Cal.3d 800, 807.) It is established beyond question that those who stay temporarily in hotels or motels while away from their permanent residences are protected from intrusions into the privacy of such temporary living quarters (ibid.); no pervasive reason has been suggested why persons who rely on motor homes for such shelter should be penalized by depriving them of similar protections.

In this same vein, although an automobile may seldom be used as a repository of intimate effects, the same characteristic is not true of a motor home. To the extent an individual uses

a motor home as his permanent or temporary residence, it, as much as a house, serves as his "place of refuge" in which he should be "free from unreasonable governmental intrusion." (Silverman v. United States (1961) 365 U.S. 505, 511.) In this sense, a motor home often serves as a repository for personal effects to the same degree as a home, an office, or certainly a piece of luggage.

Finally, unlike a car, the interior and contents of an ordinary motor home are not generally exposed to the public, nor are the occupants, the furnishings or any personal effects in plain view. The decisions of the Supreme Court "'have time and again underscored the essential purpose of the Fourth Amendment to shield the citizen from unwarranted intrusions into his

privacy.' [Citations.] . . . [¶] [I]t is [therefore] the right to privacy that is the touchstone of our inquiry." (Cardwell v. Lewis, supra, 417 U.S. at pp. 589, 591; see also Katz v. United States, supra, 389 U.S. at pp. 351-352.) The interior of a motor home is often fully shielded from view by its design: the windows, if any, are generally so small or placed in such a manner that little or none of the interior can be seen by a person standing outside. Moreover, whatever view exists may be blocked by window coverings such as shades, curtains, or blinds. Regardless of its particular configuration, however, in the case of a motor home as with a fixed house the issue is whether the occupant manifests an objectively reasonable expectation of privacy in the interior. Defendant's expectation

of privacy in the motor home here was clearly justifiable.

In a recent decision the Ninth Circuit has also held the "automobile exception" inapplicable to a motor home. (United States v. Williams (9th Cir. 1980) 630 F.2d 1322, 1326.) In Williams, border patrol agents detained an automobile that had been travelling with a Pace Arrow motor home; the agent suspected the car might be transporting illegal aliens. The driver of the car directed the agent to the motor home to obtain a key for the car's trunk; occupants of the motor home denied any knowledge of the key or the car. The agents broke into the trunk of the car and discovered contraband and substances used in the manufacture of contraband. One agent, suspicious of the association between the car and the motor home,

returned to the motor home, which had moved in the interim, and arrested its occupants. Five hours later, narcotics agents arrived and searched the motor home without a warrant.

The court held this search could not be justified under the "automobile exception" because of the greater expectation of privacy associated with a motor home: "The vehicle in question was not an ordinary automobile but a motor home. Whatever expectations of privacy those travelling in an ordinary car have, those travelling in a motor home have expectations that are significantly greater. People typically do not remain in an auto unless it is going somewhere. The same is not true of a motor home, in which people can actually live. In the ordinary motor home, the glass is tinted or shades can be drawn

so that passers-by cannot peer in. Moreover, many, like the one in this case, have beds and fully equipped baths, making them in some senses more akin to a house than a car. In light of . . . these factors, we cannot uphold this search merely because it was a search of a motor home." (Ibid.)[6/]

At the very core of the Fourth Amendment protection against warrantless searches stands the right of an invidi-dual to retreat into his own home and there be free from unreasonable govern-ment intrusion. An indi-idual "'can still control a small part of his environment, his house; he can retreat

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6. Ultimately the court upheld the search on the basis of exigent circumstances of danger arising from the special risks associated with the manufacture of a particular controlled substance under these conditions (i.e., the presence of volatile chemicals). (Id. at p. 1327.)

thence from outsiders, secure in the knowledge that they cannot get at him without disobeying the Constitution. . . . A sane, decent, civilized society must provide some such oasis, some shelter from public scrutiny, some insulated enclosure, some enclave, some invoilate place which is a man's castle.'" (Silverman v. United States, supra, 365 U.S. 505, 511-512, fn. 4.) These principles hold true no less for the home resting on wheels than for the home resting on a cement foundation. In that the outward appearance of the motor home here would have alerted a reasonable person to believe it was likely to be serving as at least a temporary residence, it was entitled to the protections traditionally given to a home.7/

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7. Of course, even if the function of the structure or vehicle is not

Accordingly, we conclude that a motor home is fully protected by the Fourth Amendment and is not subject to the "automobile exception." Of course this does not preclude all warrantless searches of motor homes; it simply means that such searches cannot be justified by that particular exception to the warrant requirement.[8] We therefore proceed to inquire into the remaining

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Footnote 7 continued:

apparent from its exterior, the protections will come into play at whatever point a reasonable person would realize that the place being searched is serving as a home (e.g., from its furnishings or other residential accoutrements.)

8. We note in this respect that the People present no cognizable claim of "exigent circumstances" independent of the automotible exception itself. In that the incident occurred on a weekday afternoon while the motor home was parked within a few blocks of the courthouse, it would have been quite simple for the officers to seek a warrant from a magistrate and to have thereby avoided all their present difficulties.

justification for the search offered by the People.

III

The People next assert that their initial search of the living quarters of defendant's motor home should be upheld as a "protective sweep" for other suspects who might endanger the law enforcement officers or destroy evidence. On the record before us this purported justification must fail.

Defendant contends the protective sweep theory is being raised for the first time on appeal and must therefore be disregarded. (See Lorenzana v. Superior Court (1973) 9 Cal.3d 626, 640; People v. Superior Court (Simon) (1972) 7 Cal.3d 186, 198-199.) He concedes the argument was made by the People at the preliminary hearing, but maintains that their failure to renew it in superior

court bars them from asserting it on appeal. In the circumstances of this case, the point is not well taken. First, the record does not support defendant's version of the superior court hearing: at that hearing the district attorney, although not arguing the point, expressly stated that "we are not conceding the fact that the officer had no right to look for other suspects, because I think he had every right to protect himself by doing just that. The points and authorities just point out there are a number of different theories upon which the search . . . can be justified."

Second, the parties agreed to make the preliminary hearing transcript a part of the record in the superior court proceeding. "While it is preferable for the prosecution to set forth

its justification for a warrantless search . . . in its responses to the defendant's motion to suppress evidence, the People's theory or justification can be determined from the evidence and argument offered." (People v. Whyte (1979) 90 Cal.App.3d 235, 242; see also People v. Manning (1973) 33 Cal.App.3d 586, 601.) One rationale for the rule prohibiting the People from raising a new justification on appeal is that to allow them to do so would "deprive the defendant of a fair opportunity to present an adequate record in response." (People v. Superior Court (Simon), supra, 7 Cal.3d at p. 198; accord, People v. Miller (1972) 7 Cal.3d 219, 227.) The People here advanced the protective sweep theory at the preliminary hearing; in fact the magistrate apparently ruled in the People's favor on

that ground. Defendant had the opportunity to, and did, attack the proposed justification at that time. The full record of the preliminary hearing reflecting these arguments and counterarguments was before the superior court when it ruled on the suppression motion. Under these circumstances, there is no bar preventing the People from now urging the point.

We turn therefore to the substance of the People's protective sweep justification. In People v. Block (1971) 6 Cal.3d 239, we articulated the rule that under certain limited circumstances warrantless searches for additional suspects are permissible. In Block, police officers arrested defendant and a number of other people during a well-attended "pot party"; one officer then went upstairs in search of

other possible suspects, and while there observed marijuana in plain view. We held that the facts known to the officer (i.e., presence of six or seven persons downstairs at a "pot party" involving an undetermined number of participants; lights on upstairs) supported a reasonable belief that additional culpable persons might be in the house; the officer's search was therefore reasonable.

We emphasized, however, that a determination of the reasonableness of the officer's actions was "dependent upon the existence of facts available to him at the moment of the search or seizure which would warrant a man of reasonable caution in the belief that the action taken was appropriate. [Citation.] And in determining whether the officer acted reasonably, due weight

must be given not to his unparticularized suspicions or 'hunches,' but to the reasonable inferences which he is entitled to draw from the facts in the light of his experience; in other words, he must be able to point to specific and articulable facts from which he concluded that his action was necessary." (Id. at p. 244.)

In Dillon v. Superior Court (1972) 7 Cal.3d 305, we applied Block and held that the circumstances presented did not justify a search for other suspects. There, police officers investigating reports of marijuana cultivation in a backyard accompanied the defendant to the suspected location behind the house and arrested her. The defendant then went inside the house to make a phone call, again accompanied by the officers. The officers, over the

defendant's objection, searched the entire house and located contraband.

We held that the information known to the officers did not constitute "sufficient and articulable facts" to justify the search: "None of the officers testified that he was in fear of his life or safety. The detective in charge admitted that he had no specific articulable information that any suspects were in the house at that moment; only general information that two other persons had been living at the house." (Id. at p. 313.) We concluded that "the mere possibility of additional persons in the house, without more, is not enough to provide probable cause to search the entire premises for additional suspects. . . . [¶] [T]he mere fact that the marijuana plants were found in the backyard and that two

others had been living at the house, without additional facts, does not furnish probable cause to believe that others may be present in the house." (Id. at p. 314.)

Federal law applies a similar standard and allows protective sweep searches only "when the officers reasonably believe that there might be other persons on the premises who could pose some danger to them." (United States v. Gardner (9th Cir. 1980) 627 F.2d 906, 909-910, and cases cited; accord, United States v. Allen (9th Cir. 1980) 675 F.2d 1373, 1382; United States v. Bowdach (5th Cir. 1977) 561 F.2d 1160, 1168-1169.) The underlying rationale for the protective sweep doctrine is, of course, the exigent circumstances exception to the warrant requirement: "When police officers, acting on probable cause and

in good faith, reasonably believe from the totality of circumstances that (a) evidence or contraband will imminently be destroyed or (b) the nature of the crime or character of the suspect(s) pose a risk of danger to the arresting officers or third persons, exigent circumstances justify a warrantless entry, search or seizure of the premises." (Fns. omitted; italics added.) (United States v. Kunkler (9th Cir. 1982) 679 F.2d 187, 191-192; accord, United States v. Gardner (5th Cir. 1977) 553 F.2d 946, 948; United States v. Guidry (6th Cir. 1976) 534 F.2d 1220, 1222-1223; see also People v. Ramey, supra, 16 Cal.3d at p. 276.)

Applying the foregoing principles to the case at hand, we conclude that the facts presented did not justify the warrantless entry of the motor home.

As we have noted herein, the burden is on the People to establish that a warrantless search was justified under an exception to the warrant requirement. Thus, to the extent the People relied on the protective sweep theory, it was their burden to show that the officers were aware of specific, articulable facts from which they could reasonably infer other suspects were in the motor home.

In essence, the People contend that the WeTip letter sufficiently justified a reasonable belief that other suspects might be present. This letter purportedly (1) linked the motor home to drug dealing activities, and (2) indicated that Lee Bowman was customarily using the motor home for such activities. We note first that the WeTip letter was based on uncorroborated

anonymous information, not a justifiable basis, without more, for specific and articulable suspicions. Second, the reference to Bowman in the letter had no relevance to whether he was inside the motor home at the time defendant was arrested. In Dillon, we held that the mere possibility that others might be inside the house based on the fact more than one person lived there was insufficient to support a protective sweep search. In the present case there was even less support: the WeTip information was of marginal reliability, and even if relied on, it indicated only a possible association of Bowman to the motor nome. Bowman's tenuous connection to the motor home provides little support for a reasonable belief that he lived there or that he was present at the time of defendant's arrest. Indeed,

Agent Williams testified he believed defendant "had taken the place" of Bowman.

Moreover, the motor home had been under surveillance for over an hour and no one except defendant and the youth had entered or left. None of the officers testified that they had any reason to believe there were other suspects inside or that they did in fact subjectively believe this was the case. Furthermore, the record is silent as to whether the officers questioned the youth to discover if there were others inside, and if they did, what his response was. Had the officers been truly concerned for their safety, it would have been elementary for them to have asked the person who had just left the motor home how many people were

inside.[9] Thus, the People failed to establish that the officers had a reasonable belief, grounded on specific articulable facts, that other persons were inside the motor home.[10] The People's attempt to justify the search

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9. This is not to say, of course, that had the youth stated defendant was alone, the officers would have been required to trust his response. It appears likely, however, that if the officers believed the boy's admission that he received marijuana for sex, there would be little reason to disbelieve a far less incriminatory statement as to the number of occupants in the motor home. In any event, any response would simply have been another factor for the officers to consider in determining whether there was reasonable cause under the totality of the circumstances to believe others were inside the motor home.

10. We also note that none of the officers even alluded in his testimony to a suspicion that evidence or contraband was in danger of imminent destruction. We conclude therefore that the People did not rely on potential destruction of evidence as part of their justification for the protective sweep search.

on the basis of the protective sweep exception must, therfore, be rejected.[11]

In light of the foregoing, the order of probation is reversed and the

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11. Because of our conclusion in parts II and III, ante, that the initial warrantless search of the motor home was not justified by an exception to the warrant requirement, we need not reach the issue of the validity of the subsequent search. In any event, the burden, of course, would be on the People to justify this additional warrantless search. The only argument asserted by the People on this point, however, relies solely on the validity of the initial search of the motor home; i.e., the People contend that the marijuana and paraphernalia found as a result of the first search provided probable cause to believe additional contraband would be found insidethe motor home. Our holding that the initial search was unreasonable leads inevitably to the conclusion that its fruits cannot be used to justify the subsequent search.

case is remanded to the trial court to permit defendant to withdraw his plea and for further proceedings consistent with this opinion. (People v. Miller (1983) 33 Cal.3d 545, 556.)

MOSK, J.

WE CONCUR:

BIRD, C.J.
KAUS, J.
BROUSSARD, J.
REYNOSO, J.
GRODIN, J.

C O P Y

PEOPLE v. CARNEY

Crim. 22047

DISSENTING OPINION BY RICHARDSON, J.

I respectfully dissent.

In my view, under the facts of the present case the officer's search of defendant's vehicle was valid by reason of the "automobile exception" to the warrant requirement. (See People v. Chavers (1983) 33 Cal.3d 462.) The majority holds, however, that "a motor home . . . is not subject to the 'automobile exception.'" (Ante, p. ___ [maj. opn., at p. A-30 [p. 16 of orig. opn.].) Considering the necessity for careful guidance to law enforcement, I have several objections to that generalization.

First, the majority fails to define its terms. What precisely are "motor homes"? They are almost

infinitely variable in size, shape, design, access, and visibility. Some of the smaller ones are the most enclosed. Others are separately attahched as trailers, while still others have direct access from the driver's cab. Is a camper or recreational vehicle a "motor home"? What about a large van or truck? As we explained so recently in Chavers, "there is a demonstrable need for clear guidelines by which the police can gauge and regulate their conduct, rather than a complex set of rules dependent upon the particular facts . . . ." (33 Cal.3d at p. 469.) Although the majority uses the term as if it were readily understood, I find no definition either in statute or dictionary.

Moreover, the majority implies that any motorized vehicle which also serves as a "residence" would be

afforded constitutional protection as a "motor home." Some people live in the cab of a truck. For others, "home" may be a sleeping bag thrown in the back of a pickup truck. The interior of many vehicles is obscured by tinted glass or shades or venetian blinds. Does this fact alone establish the vehicle as a "residence" for Fourth Amendment purposes? If it does not, how then are police officers to determine that a protectible "residential" use actually exists without first entering the vehicle? If a motor home is a residence, what is the address of the residence?

We are concerned, here, with matters of degree. I fully agree that definitions are difficult and that those who "reside" or "live" in a motorized vehicle have a heightened expectation

of privacy, but broad generalizations are not useful. While protecting the citizens from unreasonable police intrusions, we also should recognize the difficulty facing law enforcement in balancing its obligation to protect the general public from criminal depredation.

In my view, if the facts reasonably indicate to the investigating officers that the vehicle is currently being used primarily as a residence rather than for transportation purposes, then the "automobile exception" would be inapplicable. Such residential use might be indicated by the attachment to exterior utility services, for example. On the other hand, if the facts reasonably disclose no such residential use, or if they indicate that such use is

secondary or collateral to transportation purposes, then the exception should apply. The reason for the "exigency" exception, the full mobility of a motor vehicle, has equal application to "motor homes." With most motor homes, the "residence" can be three states away in a matter of hours.

In the present case, defendant's "motor home" was parked on a weekday afternoon in a downtown vehicular public parking lot near commercial enterprises, rather than in a neighborhood mobile home park or other usual facility indicating current residential use. To me, a "motor home" parked in a public parking lot is more "vehicle" than "residence." Of course, it may be both and I readily acknowledge that we are working in gray areas. However, given the time of day and the location

of defendant's vehicle, the officers reasonably could assume that it was then being used primarily, predominantly and principally for transportation uses. Accordingly, the search was valid.

I would affirm the judgment.

RICHARDSON, J.

PEOPLE v. CHARLES R. CARNEY

Crim. 22047

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SUPERIOR COURT: San Diego

SUPERIOR COURT NO.: CR 47927

SUPERIOR COURT JUDGE: Honorable
William T. Low

APPENDIX B

APPENDIX B

[Filed October 6, 1983]

Order Due

October 7, 1983

ORDER DENYING REHEARING

Crim. No. 22047

IN THE SUPREME COURT OF THE

STATE OF CALIFORNIA

IN BANK

PEOPLE

v.

CHARLES R. CARNEY

Application for stay of issuance of remittitur DENIED.

Respondent's petition for rehearing DENIED.

Richardson, J., is of the opinion the petition should be granted.

[signed] BIRD
Chief Justice

AFFIDAVIT OF SERVICE BY MAIL

Attorney:

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the State of California
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110 West A Street, Suite 700
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No: _____

PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner

v.

CHARLES R. CARNEY,

Respondent.

I, THE UNDERSIGNED, say: I am a citizen of the United States, over 18 years of age, employed in the County of San Diego in which County the below stated mailing occurred, and not a party to the subject cause, my business address being 110 West A Street, Suite 700, San Diego, California 92101.

I have served the within PETITION FOR WRIT OF CERTIORARI as follows: To Alexander L. Stevas, Clerk, Supreme Court of the United States, Washington, D.C. 20543, an original and 39 copies, of which a true and correct copy of the document filed in this cause is hereunto affixed; AND, by placing 3 copies in a separate envelope addressed for and to each addressee named as follows:

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FOR DELIVERY TO:
Hon. William T. Low, Judge

Each envelope was then sealed and with the postage prepaid deposited in the United States Mail by me at San Diego, California, on the 23 day of November, 1983.

There is a delivery service by United States Mail at each place so addressed or regular communication by United States Mail between the place of mailing and each place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California, November 23, 1983.

Clifford E. Reed, Jr.
CLIFFORD E. REED, JR.

Subscribed and sworn to before me
this 23rd day of November, 1983.

Notary Public in and for said County and State

KAREN K. LUM
NOTARY PUBLIC — CALIFORNIA
COUNTY OF SAN DIEGO
My Commission expires Feb. 03, 1984